

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

ANDREW SCOTT FULKERSON,
Plaintiff,

vs.

EMILY M. WALKER,
Defendant.

Case No. 18-CV-175-CVE-FHM

OPINION AND ORDER

The United States of America's Motion to Quash Subpoena Directed to Jack C. Montgomery VA Medical Center, [Dkt. 4], is before the undersigned United States Magistrate Judge for decision. The motion is before this court, having been removed from state court under 42 U.S.C. § 1442 (a), (d). Plaintiff filed a response to the motion, [Dkt. 5].

In state court Plaintiff issued a subpoena duces tecum to the Jack C. Montgomery VA Medical Center (VA Medical) to obtain the records of Defendant Emily M. Walker. VA Medical informed Plaintiff that, pursuant to applicable statutes and regulations, medical records could not be produced, absent either a written authorization from Ms. Walker or a court order. Plaintiff was further advised that a subpoena does not constitute a court order for such purposes. Plaintiff indicated his intention to persist in the attempt to enforce the subpoena. The VA Center seeks an order quashing the subpoena.

The VA Center is subject to laws that address the privacy of medical records, Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936 ("HIPAA") and regulations that outline the procedures to be followed for the release of records, 38 C.F.R. §1.511(c). 38 C.F.R. § 1.511 provides that VA records may be

released pursuant to court order, and that a subpoena is not sufficient authority for release of medical records. Plaintiff has not demonstrated that the regulations are not applicable to this case.

The court rejects Plaintiff's assertion that the VA Center somehow waived any objection to the subpoena by advising him that it would gladly produce the records upon presentation of a validly signed authorization or in response to a court order. Further, the court finds that neither Plaintiff's due process rights, nor the Tenth Amendment are implicated by the VA Center's insistence that Plaintiff follow proper procedures for the release of medical records.

The court finds that the United States of America's Motion to Quash Subpoena Directed to Jack C. Montgomery VA Medical Center, [Dkt. 4], should be and is hereby GRANTED.

The subpoena duces tecum issued on March 14, 2018, directing Jack C Montgomery VA Medical Center to appear on April 12, 2018, to testify and produce any and all medical records concerning Emily M. Walker is QUASHED and of no further effect.

SO ORDERED this 11th day of April, 2018.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE